

- (E) Developing cost estimates;
- (F) Determining specifications;
- (G) Evaluating contractor performance and conducting independent verification and validation;
- (H) Directing other contractors' (other than subcontractors) operations;
- (I) Developing test requirements and evaluating test data;
- (J) Developing work statements (but see paragraph (ii)(B) of this definition).
- (ii) Does not include—
 - (A) Design and development work of design and development contractors, in accordance with FAR 9.505-2(a)(3) or FAR 9.505-2(b)(3), and the guidance at PGI 209.571-7; or
 - (B) Preparation of work statements by contractors, acting as industry representatives, under the supervision and control of Government representatives, in accordance with FAR 9.505-2(b)(1)(ii).

[75 FR 81913, Dec. 29, 2010]

209.571-2 Applicability.

- (a) This subsection applies to major defense acquisition programs.
- (b) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

[75 FR 81913, Dec. 29, 2010]

209.571-3 Policy.

It is DoD policy that—

- (a) Agencies shall obtain advice on major defense acquisition programs and pre-major defense acquisition programs from sources that are objective and unbiased; and
- (b) Contracting officers generally should seek to resolve organizational conflicts of interest in a manner that will promote competition and preserve DoD access to the expertise and experience of qualified contractors. Accordingly, contracting officers should, to the extent feasible, employ organizational conflict of interest resolution strategies that do not unnecessarily restrict the pool of potential offerors in current or future acquisitions. Further, contracting activities shall not impose across-the-board restrictions or limitations on the use of particular resolution methods, except as may be re-

quired under 209.571-7 or as may be appropriate in particular acquisitions.

[75 FR 81913, Dec. 29, 2010]

209.571-4 Mitigation.

(a) Mitigation is any action taken to minimize an organizational conflict of interest. Mitigation may require Government action, contractor action, or a combination of both.

(b) If the contracting officer and the contractor have agreed to mitigation of an organizational conflict of interest, a Government-approved Organizational Conflict of Interest Mitigation Plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract.

(c) If the contracting officer determines, after consultation with agency legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then the contracting officer, taking into account both the instant contract and longer term Government needs, shall use another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but see statutory prohibition in 209.571-7, which cannot be waived).

(d) For any acquisition that exceeds \$1 billion, the contracting officer shall brief the senior procurement executive before determining that an offeror's mitigation plan is unacceptable.

[75 FR 81913, Dec. 29, 2010]

209.571-5 Lead system integrators.

For limitations on contractors acting as lead systems integrators, see 209.570.

[75 FR 81913, Dec. 29, 2010]

209.571-6 Identification of organizational conflicts of interest.

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, contracting officers shall consider—

- (a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program